

Paul G. Cassell

5/3/2016

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

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NICOLE HARRIS, : DEPOSITION OF:
Plaintiff, : PAUL G. CASSELL
v. : Case No. 1:14-CV-04391
CITY OF CHICAGO, et al., : TAKEN: May 3, 2016
Defendant. :

-ooOoo-

Deposition of PAUL G. CASSELL, taken on behalf
of the Plaintiff, at the offices of Reporters Inc.,
10 West 100 South, Suite 250, Salt Lake City, Utah,
before DEIRDRE RAND, Registered Professional Reporter
and Notary Public in and for the State of Utah, pursuant
to notice.

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APPEARANCES

For the Plaintiff:

STUART CHANEN (Via telephone)
VALOREM LAW GROUP
35 East Wacker Drive
Suite 3000
Chicago, Illinois 60602
stuart.chanen@valoremllaw.com

For the Defendants:

SHNEUR NATHAN
HALE LAW LLC
53 W. Jackson Boulevard
Suite 330
Chicago, Illinois 60604
snathan@ahalelaw.com

KYLE L. FLYNN (Via telephone)
GREENBERG TRAURIG
77 West Wacker Drive
Suite 3100
Chicago, Illinois 60601
flynnk@gtlaw.com

Also present:

DR. RICHARD LEO, Expert Witness

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1 May 3, 2016 8:56 a.m.

2 PROCEEDINGS

3 PAUL G. CASSELL,

4 called as a witness and duly sworn by the Certified

5 Court Reporter to tell the truth, was examined and

6 testified as follows:

7 EXAMINATION

8 BY MR. CHANEN:

9 Q. Mr. Cassell, my name is Stuart Chanen. I'm a
08:56 10 lawyer in Chicago, and I represent Nicole Harris in this
11 case in which Ms. Harris has sued the City of Chicago
12 and eight individual Chicago police officers.

13 Mr. Cassell?

14 A. Yes.

08:57 15 Q. Wrongful convictions exist, correct?

16 A. Yes. I assume you mean by "wrongful
17 conviction," conviction of those people who are
18 factually innocent of crimes?

19 Q. Correct.

08:57 20 A. Yes.

21 Q. Let's go with that definition.

22 A. All right.

23 Q. I've -- we know that the criminal justice
24 system is fallible, correct?

08:57 25 A. Sure.

1 (Pages 1 to 4)

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<p style="text-align: right;">Page 17</p> <p>1 gangs, and gang members may want to take the rap, 2 quote/unquote, for someone or cover for another person. 3 And so you have that question of voluntary false 4 confessions. 09:15 5 Q. Okay. But, sir, my question to you is, 6 excluding all voluntary false confessions -- 7 A. All right. 8 Q. -- excluding all mental retardations, and 9 excluding all situations in which police officers take 09:15 10 their guns out of their holsters, put them next to the 11 head of the suspect and demand that they confess to a 12 crime that they didn't commit -- excluding those three 13 examples, I'm asking you, as a self-declared expert, 14 what are the causes of false confessions as we know them 09:15 15 as of 2016? 16 MR. NATHAN: Objection; form. Argumentative. 17 THE WITNESS: So let me just make sure I 18 understood the question. I'm excluding all voluntary 19 false confessions? 09:16 20 Q. (BY MR. CHANEN:) Yes. As you defined as 21 someone who had a motivation either through publicity or 22 helping a friend confessing for some internal personal 23 motive, we're going to exclude those kinds of voluntary 24 confessions. 09:16 25 So with those two exclusions, my question is,</p>	<p>1 "We're not going to throw you in prison for ten years if 2 you confess." The promise of leniency. 3 So those would be, again, promises -- those 4 would be situations where there would be the potential 09:17 5 for a false confession being obtained. So those would 6 be the kind of things that could cause a false 7 confession. 8 For example, circling into this case, I know 9 Ms. Harris had said that she was threatened to give a 09:18 10 confession, and that's why, in her view, she falsely 11 confessed. And so that -- if I understand it, you know, 12 circling into this particular case, that would be one of 13 the issues that would be germane. 14 Q. Okay. Other than threats and promises of 09:18 15 leniency, what are other causes of involuntary 16 confessions? 17 A. Of involuntary confessions? Right. Well, 18 threats can include -- let's be clear what we're 19 excluding, then, when we say, okay, just to exclude 09:18 20 threats. I mean, for example, one of the arguments in 21 this case is a question of sleep deprivation. And so if 22 somebody is told, "Look, I'm going to deprive you of 23 sleep unless you confess," that, to my mind, would be an 24 example of the kind of threat that could render a 09:18 25 confession involuntary.</p>
	Page 20
<p style="text-align: right;">Page 18</p> <p>1 what -- because you agree that false confessions exist, 2 correct? 3 A. Correct. 4 Q. All right. So I'm asking you, as of 2016, not 09:16 5 as of 1999, and as a person who claims to be an expert 6 in this area, what are the causes of false confessions? 7 A. Right. And so the reason that I -- I, 8 obviously, want to give you as much information as you 9 want here. The difficulty I'm having with the form of 09:16 10 that question is you say I should be excluding voluntary 11 false confessions. And one way of dividing the world 12 would be to say there's a universe of confessions, some 13 of which are voluntary, some of which are involuntary. 14 So if I exclude all voluntary false 09:17 15 confessions, then it seems to me I'm looking at a world 16 of involuntary false confessions, where -- maybe not a 17 gun to the head, but some sort of pressure, coercion, or 18 something else that rendered the confession involuntary 19 would be the causal factor. 09:17 20 And so, you know, there could be a situation 21 of an involuntary false confession where even though a 22 gun to the head wasn't used, there could be a threat. 23 There could also be a promise of leniency if someone -- 24 you know, the flip side to saying, "We're going to throw 09:17 25 you in prison for ten years if you confess," is to say,</p>	<p>1 There could be psychological threats that are 2 made, as well. And so those, again, would be the kind 3 of things that could lead to false confessions. 4 I mean, I think the point being -- I've tried 09:19 5 to list, you know, a series of different factors that 6 can come in. It's likely to be a concatenation of 7 factors in a particular case, and I don't know that it's 8 possible to say, without looking -- you know, in the 9 abstract, what is -- you know, is there one single 09:19 10 factor that causes false confessions? No, I don't think 11 that there is. And I think you have to look at 12 particular cases to try to decide what's going on in 13 particular circumstances. 14 Q. Okay. But you've studied the literature -- 09:19 15 you've studied cases in which -- in which you believe -- 16 well, let me ask a different question. 17 You said that you identified, in your 1999 18 article, nine cases of false confessions that you 19 believed were undisputed false confessions, correct? 09:20 20 A. That's correct. Yes. 21 Q. All right. And between 1999 and 2016, have 22 you become aware of more cases of undisputed false 23 confessions? 24 A. Yes. 09:20 25 Q. And tell me, please, how you go about</p>

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09:31	<p>1 universe of cases to explore, because there we had what 2 were most assuredly false confessions, that it wasn't -- 3 didn't seem to be anyone arguing the contrary of that 4 proposition. And so then that became an interesting 5 universe of cases to look at to see if there were any 6 common denominators among those nine cases. 7 Q. Okay. So other than agreements between the 8 defendant, the police authorities, and the prosecuting 9 authorities, is there any other way in which you, in 10 your research, identify an undisputed confession? 11 A. Undisputed false confession? 12 Q. Yes. I'm sorry. I should have -- and that 13 was badly phrased by me. Yes, sir, an undisputed false 14 confession. 15 A. No. I mean, if there are other -- if there 16 are disputes out there, then almost by definition it's 17 not an undisputed false confession. 18 Q. All right. And let me ask the question a 19 different way. What quantum of evidence do you need to 20 consider a false confession to be false, for purposes of 21 your research? 22 A. Well, there are different thresholds that one 23 could set. You could set a threshold of there being a 24 probable false confession, you could have some kind of 25 highly probable false confession, or you would have an</p>	09:34	<p>1 speaking, it's hard to see where there would be any 2 doubt about putting that confession into the false 3 confession category. If there is a dispute, then you 4 have to come up with these methodologies for deciding, 5 all right, how much proof are you going to have before 6 you put something in the false confession category? 7 Q. Well, let me ask you a question, sir -- it's 8 related, but on a slightly different topic. Do you 9 believe in the presumption of innocence? 10 A. Sure. In our criminal justice system? 11 Absolutely. 12 Q. Okay. And do you teach presumption of 13 innocence in your criminal law class? 14 A. Yes. In my criminal law class we talk about 15 In re Winship and some of the other cases where 16 presumption of innocence is viewed as a foundation of 17 the American criminal justice system. 18 Q. When you say foundation, I mean, it is the 19 bulwark of the American criminal justice system, 20 correct? 21 A. Yeah. I don't know that it's an exclusive 22 bulwark, there are other things as well, but it is 23 certainly a bulwark of the American criminal justice 24 system that before someone is convicted and sent to 25 prison, we're going to presume that they're innocent and</p>
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09:33	<p>1 undisputed false confession. 2 And so a probable false confession would be 3 one in which the preponderance of the evidence would 4 show that the confession is false. A highly probable 5 false confession is an intermediate category of cases. 6 You could have something like a clear and convincing 7 evidence standard, I suppose. And then of course we've 8 been talking at length this morning about the undisputed 9 false confession, where you'd have essentially a 10 certainty that the confession was false. 11 Q. But -- and so how do you -- which do you think 12 is appropriate measure of evidence to treat a confession 13 -- a false confession as undisputed? Should you -- 14 should scientists and other researchers use objective 15 standards or subjective standards? 16 A. Well, I mean, that's an interesting question, 17 and it's one that I know the National Registry of 18 Exonerations at the University of Michigan Law School 19 has wrestled with. How do you put somebody into the 20 registry as an innocent person? What kind of standards 21 do you have to employ? 22 Ideally, we would have, I guess, objective 23 standards, although then we can get into a debate about 24 what it means to be objective in this case. If everyone 25 agrees that someone is innocent, then, objectively</p>	09:35	<p>1 we're going to require the state to establish, by proof 2 beyond a reasonable doubt, that the person is, in fact, 3 guilty of a crime. 4 Q. All right. And when we put them through 5 that -- we put them through something we call a trial, 6 correct? 7 A. Yeah, in the criminal justice system? Sure. 8 A criminal trial. 9 Q. Yeah. And when we put them through a criminal 10 trial, if a jury rules that they are -- based on the 11 evidence that the jury hears, that the person is guilty 12 beyond a reasonable doubt, then that -- the defendant 13 loses their presumption of innocence, correct? 14 A. That's right, the presumption has been 15 dissipated at that point, or disproven, and so the 16 defendant, at that point, has been found guilty in the 17 criminal justice system. 18 Q. Right. But then in addition to the trial of 19 the criminal justice system, there are also other 20 aspects of the system. For example, appeals, correct? 21 A. Oh, certainly. Yes, if the defendant is 22 convicted, the defendant is entitled in all 23 jurisdictions, as I understand it, to seek review in an 24 appellate court of that conviction. 25 Q. Okay.</p>

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10:04	1 was there supporting evidence for the officers' position; had the officers' position been litigated in court where there was an opportunity for adversary testing of both the pros and cons of the profession; whether the officers' position was credible or incredible; what were the motivations of the officers in contesting the dispute; whether the officers were inventing an allegation that the confession was truthful only at the eleventh hour and had never maintained that position earlier. Those would be all the kinds of factors I'd want to look at in making such a determination.	10:06	1 words, what makes you an expert on the issue of police interrogation. A. Sure. So I have extensive experience in the criminal justice system. I went to Stanford Law School for 1981 to '84, where I took a number of classes on criminal justice issues. After that, I worked on criminal justice cases for two years as a law clerk, from '84 to '85. I worked for then Judge Antonin Scalia when he served on the D.C. circuit. And then from 1985 to '86 I worked with Chief Justice Burger, as his law clerk, on the U.S. Supreme Court.
10:04	13 Q. Okay. 14 Have you done any -- ever done any experiments of any kind that relate to the issue of false confession?	10:07	13 In the D.C. circuit, I would say that about 15 percent of the cases were criminal cases. And in the U.S. Supreme Court, I would say about 40 to 45 percent of the cases were criminal cases. Following that, I served a two-year -- two years as an associate deputy attorney general in the U.S. Department of Justice, working with the deputy attorney general. There were, I think, five or six of us who were associate deputy attorney generals, and we each had different portfolios. My portfolio included criminal justice issues, with a special emphasis on confessions. For example, I was responsible for reviewing all of the appellate memos that went through
10:04	17 A. By "experiments," are we talking about laboratory types of experiments, you know, the kinds that --	10:07	17
10:04	20 Q. Yeah, scientific experiments, whether in a laboratory or another setting.	10:07	20
	22 A. No, I haven't done something like that --		21
	23 Q. Okay.		22
	24 A. -- personally.		23
10:05	25 Q. Go ahead.	10:07	24
			25
Page 54		Page 56	
10:05	1 A. I mean, I've reviewed other -- you know, other people have written up laboratory studies, but I have not personally conducted such a study. Q. Well, one of the things you say here near the very beginning of your report is that you are an expert on police -- well, actually, to quote you precisely, you say, "I am an expert on criminal justice issues, with particular expertise on police interrogations and false confessions."	10:08	1 the Solicitor General's Office regarding Miranda issues that were being raised in federal criminal cases. Following that, from -- I believe it was 1988 to 1991, I was an assistant United States attorney in the Eastern District of Virginia, a federal prosecutor, to use the shorthand. And I started out, for the first six months, in the misdemeanor unit, and then for the next approximately three and a half years, I was in the general crimes unit of that office, handling a whole host of crimes ranging from homicides, to assaults, to gun running, to -- you name it. I mean, it was whatever didn't fit into the drug unit of the fraud unit, I think we handled.
10:05	10 Is that something you say in your report?	10:08	10
	11 A. I mean, I don't think I used the exact words you're using there. I'm looking at -- are you looking at page 3, about five lines down from the top?	10:08	11
10:06	14 Q. No. I'm looking at your March 30, 2016, letter to Shneur Nathan --	10:08	12
	16 A. Okay. Yes.	10:08	13
	17 Q. -- page 1, paragraph three, line three, beginning, "I am an expert."	10:08	14
10:06	19 A. Oh, I see. Yes. There we go.	10:08	15
10:06	20 Q. So you consider yourself an expert on police interrogation, correct?	10:09	16
	22 A. Correct.	10:09	17
	23 Q. And an expert on false confessions, correct?	10:09	18
	24 A. Correct.	10:09	19
10:06	25 Q. All right. And tell me, sir, in your own	10:09	20
		10:09	21
		10:09	22
		10:09	23
		10:09	24
		10:09	25

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1	Q. (BY MR. CHANEN:) That's called contamination,	1	A. No.
2	correct, sir?	2	Q. Do you have a degree in sociology?
3	A. Yeah. So now -- those are two different --	3	A. No.
4	let me just answer your second question. I think you've	4	Q. Did you take any psychology classes when you
10:24 5	described there a situation that does sound like	10:27 5	were an undergraduate student at Stanford University?
6	contamination would be possible for the interrogation.	6	A. And Western Washington University. And I
7	And, obviously, contamination, other things being equal,	7	believe the answer is no.
8	is something that should be avoided.	8	Q. Okay.
9	Q. Okay.	9	Tell me -- I misunderstood one thing you said
10:25 10	Let's go back, then, to your -- the issue of	10:27 10	there. You named another university other than
11	your being an expert. You've given other depositions in	11	Stanford.
12	your capacity for being an expert, other than in this	12	A. Yes.
13	case, correct?	13	Q. What was that university?
14	A. That's correct.	14	A. Yes. So from 1977 through 1979 I attended
10:25 15	Q. Right.	10:27 15	Stanford University. From 1979 through 1981 I
16	And did you answer the questions that were	16	transferred to Western Washington University in
17	presented to you at those prior depositions truthfully?	17	Bellingham, Washington. And then in the summer of 1981
18	A. Yes.	18	I returned to Stanford University and got my BA in
19	Q. Okay. Because you understand you're sworn,	19	economics. And then after that, I got a JD from
10:25 20	under oath, to tell the truth, and so you -- it's your	10:28 20	Stanford Law School from the period 1981 through 1984.
21	position that you've told the truth at every deposition	21	Q. What took you out to Western -- I'm not trying
22	you've given as an expert or as a proposed expert,	22	to get personal here.
23	correct?	23	A. Sure.
24	A. Absolutely.	24	Q. If there was some family or personal
10:25 25	Q. All right.	10:28 25	circumstances you don't want to talk about, I'm not
Page 70		Page 72	
1	So it's correct -- and so -- let's go back to	1	trying to pry in that regard. But if you can talk about
2	your background. Do you have a degree in psychology?	2	it, what got you to leave Stanford and go to Western
3	A. Well, here I think what I would propose to do	3	Washington?
4	is -- you had earlier propounded a question to me as	4	A. Sure. There was a unique opportunity
10:26 5	what made me an expert on police interrogations,	10:28 5	available at Western Washington to be part of a debate
6	including false confessions, and I was halfway through	6	team that traveled nationally around the country, and so
7	completing that answer when I -- when you jumped in with	7	I accepted that opportunity to join their debate team
8	a specific question.	8	for two years before returning back to Stanford to
9	And so, I think for purposes of having a	9	finish my undergraduate degree.
10:26 10	complete record, I should go through the rest of the	10:28 10	Q. Got it. And -- okay.
11	things now, and then you can follow up with -- if you	11	So you did not take any psychology classes
12	believe that there are, you know, deficiencies in my	12	when you were at Stanford, and you did not take any
13	background, you can certainly highlight those at that	13	psychology classes when you were at Western Washington;
14	point. But I would like, in fairness to me, to make	14	is that correct?
10:26 15	sure that all of the information that I have that I	10:28 15	A. I believe that's correct. I don't have my
16	think lends to me being an expert is in the record.	16	transcript right in front of me, but that's my
17	And so we were up through --	17	recollection.
18	Q. You know what, sir, I agree with you that you	18	Q. All right.
19	should have the right to -- if you feel that that	19	And you don't have a degree in social
10:26 20	question had an incomplete answer and you want to	10:29 20	psychology, correct?
21	complete the answer, I agree, in absolute fairness, I	21	A. That's correct.
22	should give you the opportunity to do that, and I am	22	Q. And you have no formal training in psychology,
23	going to give you the opportunity to do that.	23	sociology, or social psychology, correct?
24	But my question right now is, do you have a	24	A. Yeah. If by that you mean undergraduate or
10:27 25	degree in psychology? Yes or no?	10:29 25	graduate education, that's correct.

18 (Pages 69 to 72)

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1	Q. Well, during your graduate school, you didn't	1	rape case, no.
2	take any classes in psychology, did you?	2	Q. Okay.
3	A. No. Those were law classes. I guess the	3	Did you ever have a case while at the Eastern
4	question becomes what do you mean by formal training in	4	District of Virginia that involved an interrogation by
10:29 5	psychology? I mean, I wasn't taking any psychology	10:32 5	state law -- state or municipal law enforcement officers
6	classes, I was taking law classes. Sometimes the law	6	inside a police station?
7	classes do talk about psychology, the psychology of	7	A. I believe... I mean, the problem that I'm
8	trials or something along those lines.	8	having -- there were cases that involved custodial
9	Q. Well, do you agree that modern police	9	interrogation, but those would have been primarily
10:29 10	interrogation techniques rely heavily upon psychological	10:32 10	federal agents. I can't recall whether any were
11	principles?	11	cross-designated as state agents or whether we --
12	A. Sure. I mean, that's one of the things we	12	sometimes the phrase is used "going federal," where we
13	talked about in my Miranda classes that I teach and in	13	took a state investigation and then handled in the
14	the Miranda class that I took at Stanford Law School.	14	federal system.
10:29 15	Q. Do you have any postgraduate education in any	10:32 15	Some of the cases that I handled were
16	social -- well, let's break them down. Do you have any	16	narcotics cases, for example, and it's my impression
17	postgraduate degree in psychology?	17	that some of those originated with state law enforcement
18	A. No.	18	officers and then were turned over to us for prosecution
19	Q. Sociology?	19	because of the significant federal penalties for illegal
10:30 20	A. No.	10:33 20	narcotics distribution.
21	Q. Social psychology?	21	Q. So is the answer you don't recall?
22	A. No. My only -- just to -- I know your time is	22	A. I think that's right. I mean, I want to be --
23	limited. To speed things up, my only postgraduate	23	I want to be clear that most of my involvement was with
24	degree is a juris doctorate from Stanford University.	24	federal law enforcement agencies on what would have
10:30 25	Q. Got it.	10:33 25	been, I suppose, in your nomenclature, you know, purely
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1	I want to go back for a second to the Eastern	1	federal cases.
2	District of Virginia, because I'm not sure I understand	2	Q. So when you say you had -- when you write in
3	the jurisdiction of the Eastern District of Virginia.	3	your report that you had cases at the Eastern District
4	Were you working only with federal agents, or were you	4	of Virginia that involved confessions, you're not
10:30 5	also working with state agents in terms of law	10:33 5	talking about -- well, let me rephrase that.
6	enforcement?	6	Do you include in that description confessions
7	A. Right. It was primarily federal agents, but	7	that are made in a plea agreement?
8	there were some cases that were prosecuted jointly by --	8	A. No, I wasn't thinking of that. I was thinking
9	through task forces which would have had both federal	9	of two DEA agents, for example, catching a guy with a
10:30 10	and state agent participation. Sometimes state agents	10:33 10	bunch of cocaine, arresting him, and then interrogating
11	were cross-designated to be federal agents. But	11	him about where he got the cocaine.
12	certainly, the primary agents I was interacting with	12	Q. And so I'm -- okay. Good. So now -- so
13	were federal agents.	13	you're excluding all situations involving a plea
14	Q. Okay.	14	agreement; is that correct?
10:31 15	And so did you, as an AUSA in the Eastern	10:34 15	A. So are we -- you're talking now about the
16	District of Virginia, ever handle or have -- either lead	16	sentence in my report -- let me just make sure I'm --
17	an investigation or be on a trial team in a murder case?	17	yeah, "As a federal prosecutor, I handled many" -- I'm
18	A. There was a prison... I don't -- there was a	18	looking now, just so the record is clear, at page 2 of
19	prison shanking, and I can't recall off the top of my	19	my report, three lines down from the top. "As a federal
10:31 20	head whether that was a homicide or aggravated assault.	10:34 20	prosecutor, I handled many prosecutions involving police
21	Q. Okay. What about rape?	21	questioning of suspects and legal issues pertaining to
22	A. I was involved in -- I did not -- not -- on a	22	the admissibility of confessions."
23	trial team?	23	So, for example, I remember very clearly that
24	Q. Or a lead prosecutorial investigator.	24	I sat outside the room in -- I think it was at
10:31 25	A. Not on a trial team or a lead prosecutor on a	10:34 25	Washington National Airport while two DEA agents were

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	1 district court.		1 we're considering here, was not reliable.
	2 Q. So let me ask you this, are there any federal		2 I submitted an expert report. Professor Leo,
	3 courts of appeals in the country that have ruled that		3 submitted, of course, his expert report that I was
	4 expert testimony on the causes of false confession are		4 responding to, and based on those reports and arguments
12:28	5 sufficiently accepted in the scientific community that	12:31	5 of counsel, the federal district court judge in that
	6 we will -- that, assuming all other requirements of		6 case excluded Professor Leo from testifying, based in
	7 Rule 702 are met, we will allow such testimony on the		7 part on my report and, I'm assuming, in part on other
	8 subject of the causes of false confession?		8 legal and factual considerations as well.
	9 A. Well, when you talk about causes of false		9 So that would be an example of a case where --
12:28	10 confessions, I think that you may be going a bit beyond	12:31	10 I don't know how it would factor into your position,
	11 some of the court of appeals' decisions. I mean, I'm		11 because I'm serving as a rebuttal expert in that kind of
	12 not here today as an expert on what the body of federal		12 a case.
	13 court of appeals or state court of appeals law is on		13 Q. But when you say typically -- I want to make
	14 confessions. I mean, if you want to ask specifically		14 sure I understand two things you just said.
12:29	15 about how something interacts with -- I think you're	12:31	15 A. Sure.
	16 referring to the Hall decision in the Seventh Circuit,		16 Q. When you say you're typically retained for
	17 perhaps, maybe, lurking in the background there. Or I		17 purposes of asserting that another false confession
	18 would refer to the Kowalski decision from the Michigan		18 expert should not be permitted to testify, are you
12:29	19 Supreme Court as another decision that's lurking in the		19 saying that there are other situations where you're
	20 background there. So, you know, there are particular	12:32	20 retained as a false confession expert for any other
	21 decisions we could talk about.		21 purpose?
	22 But I want to be clear. I mean, I respect		22 A. Yeah. I've -- you know, again, we've been
	23 very much my limited role here. I'm not a legal expert.		23 speaking in shorthand. Maybe I need to amplify just a
	24 I'm not here to offer a legal opinion about how the		24 little bit. Typically, I'm retained after the
12:29	25 district court judge in this case should or should not	12:32	25 plaintiff's counsel, for example, on a civil case has --
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	1 rule on legal issues. That's, obviously, up to the		1 or after criminal defense attorney's counsel has
	2 judge handling the case.		2 retained in a criminal case a false confessions expert.
	3 Q. Well, let me ask a slightly different		3 And it's frequently -- you know, I looked at the
	4 question. Have you ever testified, in your capacity as		4 evidence that's being -- or testimony that's being
12:29	5 an expert on the issue of false confession, in front of	12:32	5 proposed, and I -- in some cases, it has been my expert
	6 a jury?		6 opinion that the proposed testimony is either
	7 A. No.		7 unreliable, and therefore should be excluded in its
	8 Q. Okay. And so is it fair to say that any time		8 entirety, or if it is admitted, it should be given
	9 you have -- so, is it fair to say you have never been		9 little weight by a jury that's considering the matter.
12:30	10 qualified by a trial judge to render opinions on the	12:33	10 And it's that kind of testimony that I end up providing.
	11 issue of false confessions to a jury?		11 Sometimes, though -- and I don't know, perhaps
	12 A. Well, that, I think, requires more of a leap		12 this may be a case -- I don't -- again, I'm not trying
	13 than I could go. Typically, I'm hired as a rebuttal		13 to testify as a legal expert here. Whether somebody
	14 expert to an expert witness, you know, sometimes Richard		14 could view my report as offering opinions that could be
12:30	15 Leo, sometimes Richard Ofshe, sometimes some others.	12:33	15 affirmative opinions presented on behalf of, say, one of
	16 And it's -- sometimes it's my testimony that aspects of		16 the defendants in its own capacity, that's an issue that
	17 their testimony are impermissible or unreliable, and so		17 I would, you know, leave up to the lawyers in this case
	18 sometimes judges rely on my opinion to exclude, for		18 to discuss among themselves and, if necessary, go to the
	19 example, Richard Leo, and then at that point I'm no		19 judge to get a ruling on.
12:30	20 longer required to be a witness in the case.	12:33	20 Q. But at this point in this case, you are not
	21 An example is U.S. versus Phillipos, which was		21 offering -- at least in your report that you issued to
	22 in the District of Massachusetts. It was one of the		22 Mr. Nathan, you -- there is no affirmative testimony
	23 cases related to the Boston Marathon bombing case. And		23 that you are suggesting the judge permit you to give to
	24 there I testified that Professor Leo's expert testimony,		24 the jury in the trial of this case; is that correct?
12:31	25 was which, in some respects, similar to the testimony	12:34	25 A. Well, again, I -- my -- what I have to say on

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01:01	1 that one. 2 Q. (BY MR. CHANEN:) And here's my new question. 3 You wrote a report -- is it correct you wrote a report 4 in a case called Caine versus Burge in the Northern 5 District of Illinois? 6 A. Yes. 7 Q. All right. And who -- in Caine versus Burge, 8 Mr. Caine wanted to put in the expert testimony of 9 Dr. Richard Leo on the issue of false confession; is 10 that correct? 11 A. Yes. On a number of issues related to false 12 confession, that's correct. 13 Q. All right. 14 And the Sotos law firm, specifically Jim Sotos 15 and Elizabeth Ekl, hired you to be a rebuttal expert to 16 Dr. Leo; is that correct? 17 A. That's correct, as I recall. 18 Q. All right. 19 And you wrote a report, a letter to Ms. Ekl, 20 setting forth the reasons you believed that the district 21 court should not permit Dr. Leo's testimony; is that 22 correct? 23 A. That's oversimplified. My report said that 24 Professor Leo's conclusions on a number of aspects were 25 unreliable, and he should either be precluded from	01:03	1 A. Yes, that refreshes my recollection. Thank 2 you. He was a very capable lawyer, and there was a 3 deposition out here, in Salt Lake City. 4 Q. All right. 5 Did anyone ever -- to your knowledge, was 6 there ever a ruling in Caine versus Burge by the judge 7 as to whether Dr. Leo would be permitted to give 8 testimony to a jury should the case go to trial? 9 A. My understanding is -- and again, this would 10 be second- or third-hand. I'd let the records speak for 11 themselves. But my understanding was that the judge 12 agreed with me in part and disagreed with me in part. 13 That he excluded some aspects of Professor Leo's 14 testimony based on arguments I was making, but with 15 respect to other aspects of Professor Leo's testimony, 16 he said that the issue of reliability would be one that 17 would be determined by a jury, and they would decide 18 those issues as a finder of fact. 19 And my understanding is that the case 20 ultimately resolved before trial. I have no 21 recollection of providing any trial testimony. 22 Q. Yeah. And you wouldn't have any recollection 23 of giving any trial testimony, because you've never 24 appeared during a merits trial as an expert on false 25 confessions, correct?
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01:02	1 testifying to the jury, or if he was permitted to 2 testify to the jury, his evidence should ultimately be 3 given little weight. 4 Q. I'm sorry, little weight by the jury or little 5 weight by the judge in allowing it to go to the jury? 6 A. Little weight by the finder of fact. That is, 7 if there were a jury trial in that case by the jury. 8 Q. All right. 9 If the judge did view -- in addition to 10 writing a letter report to Ms. Ekl, did you also testify 11 at any Frye or Daubert hearing in federal district court 12 in Chicago in relation to the Caine case? 13 A. My recollection is -- and if I could take a 14 look at my report. I provided an expert report. I may 15 have been deposed, although my resume doesn't indicate 16 that. So my instinct is that I was not deposed, and so 17 I did not provide testimony in front of a judge, is my 18 recollection. 19 Q. All right. But if I tried to refresh your 20 memory by -- hold on one second. If I told you that you 21 were deposed on May 24, 2013, by an individual named 22 David Owens -- 23 A. Okay. Yes. 24 Q. -- a young African American man who works at 25 the law firm of Loevy & Loevy --	01:05	1 A. That's correct. 2 Q. All right. 3 So did you make -- when you wrote to Shneur 4 Nathan the report in this case, did you make a conscious 5 decision, Mr. Cassell, to leave out of your report the 6 judge's ruling on your rebuttal deposition -- I'm sorry, 7 let's back up one question, because I didn't ask this 8 directly. 9 A. Sure. 10 Q. After you gave the deposition in Salt Lake 11 City to Mr. Owens, to your knowledge, did the issue of 12 whether Dr. Leo's testimony would be blocked -- would 13 that -- that was given to the court, correct? I mean, 14 maybe I did establish it, because you said the judge 15 allowed some of his testimony to go forward but not 16 other parts of his testimony. 17 So at some level, it was given to the judge as 18 a contested issue, correct? 19 A. That's my understanding today, yes. 20 Q. All right. 21 Did you come to Chicago to testify in front of 22 the judge to give your rebuttal testimony orally to the 23 court at a Daubert hearing? 24 A. To the best of my recollection, no. 25 Q. Okay. I appreciate that.

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